



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/2177

Re: Property at Flat 7, 10 Montrose Street, Clydebank, G81 2JF (“the Property”)

Parties:

Miss Marzena Kurnicka, Mr Dariusz Kurnicki, 69N Zascianki Street, 15-521 Zascianki, Poland, Poland (“the Applicant”)

Mr Andrew Smith, Flat 7, 10 Montrose Street, Clydebank, G81 2JF (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and David Godfrey (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession of the Property in favour of the Applicant would be granted against the Respondent

Background

The Applicant is the owner of the Property. They had, via their agent, issued a Notice to Leave under the Act with a view to obtaining possession of the Property so that they could sell it. The Notice to Leave had expired but the Respondent had remained in the Property.

The Applicant, again through their agent, had applied to the Tribunal seeking an order for possession against the Respondent to have him removed.

The Tribunal had before it the following documentation:-

- A copy of the lease of the Property from the Applicant to the Respondent commencing 30/10/18
- A copy of the Applicant’s title to the Property

- Copy Notice to the Leave issued to the Respondent dated 13/2/24 together with evidence of receipt
- Copy s11 Homelessness Notice dated 13/2/24 together with evidence of receipt
- Application to the Tribunal dated 13/5/24

Case Management Discussion (“CMD”)

The Tribunal held a CMD by teleconference on 19 November 2024 at 2pm. The Tribunal was comprised of Mr E Miller (Chair and Legal Member) and Mr D Godfrey (Ordinary Member).

The Applicant was not present but was represented by Mr Kris Brown of Source Property.

The Respondent was present and represented himself.

Findings in Fact and Law

The Tribunal found the following to be established:-

- The Applicant was the owner of the Property;
- The Applicant had let the Property to the Respondent on a private residential tenancy with effect from 30 October 2018;
- The Applicant had validly served a Notice to Leave on the Respondent on the grounds that the Applicant wished to sell the Property;
- The Respondent had failed to remove from the Property and remained in occupation as at the date of the CMD;
- The Respondent had not been able to secure alternative accommodation to date;
- The Applicant had evidenced a genuine intention to wish to sell the Property
- Whilst the Respondent did not wish to leave the Property he was unable to provide any material reasons why it would be unreasonable for the order not to be granted in favour of the Applicant

Reasons for Decision

The Tribunal first considered the Applicant’s position in the matter. Mr Brown submitted that the Applicant had originally purchased the Property to live in themselves at a point when they lived in the UK. They had then moved back to their native Poland for a period. They had decided to let the Property whilst they were back in Poland but had planned that they would return to it when they returned to the UK. However, they had since had a change of plan and now planned to remain in Poland permanently. On the basis they did not intend to return to the UK, they did not wish to own property in the UK. They did not have any other property in the UK.

The Tribunal noted that in terms of Ground 1 of Schedule 3 of the Act, evidence of the intention to sell can be shown by, inter alia, a Home Report or instruction of an estate agent in the sale. The Applicant had not been able to show evidence of this but had explained that they wished to get the Property back first with vacant possession and

then make an assessment of the condition of the Property and what agent would be best placed to deal with a sale.

The Tribunal considered the evidence of the Applicant. There was nothing to suggest that the Applicant did not have a genuine intention to sell the Property. Given the permanent return to Poland of the Applicant, it was a logical step to sell the Property. In practical terms, waiting until they had vacant possession of the Property before instructing an estate agent was not unreasonable in the circumstances.

Taking all of the Applicant's evidence in to account, the Tribunal was satisfied that the Applicant wished to sell the Property.

The Tribunal then considered whether there were any circumstances from the Respondent's side that meant it would not be reasonable to grant the order in favour of the Applicant.

The Respondent did not dispute that the Applicant had permanently returned to Poland and wished to sell the Property. The Respondent had taken steps to find alternative accommodation. He had applied to the local authority and social landlords for housing but had not yet been offered anything. He had looked at private lets but they were beyond his means as he was on benefits.

The Respondent lived on the Property on his own. He had no immediate support network connected to the Property. Whilst he received disability benefits, the Property had not been adapted specifically for his use. There was no specific reason advanced as to why the Respondent had to remain in this particular property other than the difficulty in finding alternative accommodation.

The Tribunal had some sympathy with the position of the Respondent as they appreciated it was a difficult market to find alternative accommodation in. However, there appeared to be no benefit in allowing any extension to the Respondent to find accommodation. The private sector rentals would likely remain outwith his financial range. The local authority and social landlord lists can take significant periods of time before an individual will be offered a property. The only way to make meaningful progress to the top of these lists is for an order to possession to be granted which then obliges the local authority to make housing provision. In the absence of any other specific reason that the Respondent required to remain in the Property it did not appear to be reasonable to delay or prevent the Applicant being granted possession of the Property to any material extent.

Decision

The Tribunal determined to grant an order for possession of the Property in favour of the Applicant against the Respondent

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a

point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Ewan Miller

18 December 2024

Legal Member/Chair

Date